

Title 16, PHYSICAL THERAPY BOARD OF CALIFORNIA

NOTICE IS HEREBY GIVEN that the Physical Therapy Board of California is proposing to take the action described in the Informative Digest. Any person interested may present statements or arguments orally or in writing relevant to the action proposed at a hearing to be held at the Burbank Airport Hilton and Convention Center, 2500 Hollywood Way, Burbank, California 91505, (818) 843-6000 at 9:30 a.m. on Tuesday, May 11, 2004. Written comments, including those sent by mail, facsimile, or e-mail to the addresses listed under Contact Person in this Notice, must be received by the Physical Therapy Board of California at its office not later than 5:00 p.m. on April 26, 2004 or must be received at the hearing. The Physical Therapy Board of California, upon its own motion or at the instance of any interested party, may thereafter adopt the proposals substantially as described below or may modify such proposals if such modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written or oral testimony related to this proposal or who have requested notification of any changes to the proposal.

Authority and Reference: Pursuant to the authority vested by section 2615 of the Business and Professions Code to implement, interpret or make specific Sections 2615 and 2620.5, the Physical Therapy Board of California is considering changes to Division 13.2 of Title 16 of the California Code of Regulations as follows:

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

(1) Add section 1399.70

A report was prepared to comply with the requirements of Section 2620.5(d) of the Business and Professions Code (code) which was added to the code by Chapter 991, Statutes of 1998, as a result of the Sunset Review of the Physical Therapy Board of California (Board) by the Legislature.

The new sub-section of the Business and Professions Code directed the Board to undertake a study assessing the need for, and potential alternatives to, the certification requirement for physical therapists to perform tissue penetration for the purpose of evaluating neuromuscular performance.

The Board found that the performance of electromyography by certified physical therapists has not resulted in any injury to the public. Consequently, the Board could not identify any valid reason to end the ability of physical therapists that specialize in the practice of electromyography to perform the studies.

However, during the course of the study the Board did identify three complaints regarding the performance of electromyography that have been filed against physical therapists. None of the complaints included allegations that a patient had been injured or that the physical therapist was negligent or incompetent. Physician and surgeons filed two of these complaints alleging the report of findings that they received represented a diagnosis. The Board's investigation of these complaints determined that the report of findings did not include a diagnosis, and that the physical therapist had

submitted the report to the physician and surgeon in order that a diagnosis could be made.

The report consequently prompted the need for regulation requiring all certified electromyographers include in their reports to the diagnosing physician and surgeon that the findings reported to the patient's physician shall include the following statement: "This study has been performed in accordance with the California Business and Professions Code, and with the California Code of Regulations. The findings in this report do not represent diagnostic interpretations or medical diagnosis. The results of the electromyographic examination by the certified electromyographer are intended for integration by the physician and surgeon with the patient's history, clinical examination, and the results of any other tests performed in establishing a medical diagnosis."

This regulatory requirement would provide with certainty that the purpose of the evaluative report is solely to assist the physician and surgeon in providing a medical diagnosis to the patient.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Section 17561 Requires Reimbursement: None

Business Impact:

The board has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states.

The following studies/relevant data were relied upon in making the above determination: None

Impact on Jobs/New Businesses:

The board has determined that this regulatory proposal would not have an impact on the creation of jobs or businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Private Persons or Entities:

The Physical Therapy Board of California is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

Housing Costs: None

EFFECT ON SMALL BUSINESS

The Physical Therapy Board of California has determined that the proposed regulations would not affect small businesses and would only effect individual licensees certified to perform electromyography.

CONSIDERATION OF ALTERNATIVES

The Physical Therapy Board of California must determine that no reasonable alternative which it considered or that has otherwise been identified and brought to its attention would either be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome on affected private persons than the proposal described in this Notice.

Any interested person may present statements or arguments orally or in writing relevant to the above determinations at the above-mentioned hearing.

INITIAL STATEMENT OF REASONS AND INFORMATION

The board has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of the reasons and all of the other information upon which the proposal is based, may be obtained at the hearing or prior to the hearing upon request from the Physical Therapy Board of California at 1418 Howe Avenue, Suite 16, Sacramento, California 95825.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file that is available for public inspection by contacting the person named below.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named below or by accessing the website listed below.

CONTACT PERSON

Inquiries concerning the proposed administrative action or the substance of the proposed regulations may be addressed to:

Rebecca Marco
1418 Howe Avenue, Suite 16
Sacramento, CA 95825
(916) 561-8260
(916) 263-2560 – Fax Number
Rebecca_Marco@dca.ca.gov

The backup contact person is:

Steve Hartzell
1418 Howe Avenue, Suite 16
Sacramento, CA 95825
(916) 561-8200
(916) 263-2560 – Fax Number
Steve_Hartzell@dca.ca.gov

Inquiries concerning the substance of the proposed regulations may be directed to Rebecca Marco at (916) 561-8260.

Website Access: Materials regarding this proposal can be found at www.ptb.ca.gov.